

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Ralf WIDERA et al.
Serial No. : 10/507,179
Filed : February 25, 2005
For : METHOD FOR THE TRANSMISSION OF MEASURED
DATA FROM A MEASURING COMPUTER TO A
CONTROL COMPUTER IN A MEASURING SYSTEM
Art Unit : 2154
Examiner : Wen-Tai Lin
Confirmation No. : 4000

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APPELLANT'S AMENDED BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

SIR:

Appellants submit this brief in accordance with 37 C.F.R. § 41.37 in support of their appeal from the Final Office Action dated June 27, 2007, in the above-identified patent application. A Response to the Final Office Action was filed August 27, 2007 and an Advisory Action was mailed September 5, 2007. In response to a Notification of Non-Compliant Appeal Brief dated November 28, 2007, Applicants submit this amended brief. This brief is in support of the Notice of Appeal submitted September 19, 2007.

1. REAL PARTY IN INTEREST

The real party of interest in the present appeal is Deutsche Telekom AG of the Federal Republic of Germany. Deutsche Telekom AG is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants "which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal."

3. STATUS OF CLAIMS

Claims 1 to 12 and 28 have been cancelled.

Claims 13 to 27 and 29 to 32 are pending in the present application.

Claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 6,459,682 ("Ellesson et al.") and EP 1039691 ("Farrell et al."). Claims 16, 21, 24, 26 and 32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ellesson et al.

Appellants appeal from the final rejection of claims 13 to 27 and 29 to 32.

A copy of the appeal claims, *i.e.*, claims 13 to 27 and 29 to 32, is attached hereto in the Claims Appendix.

4. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the June 27, 2007 Final Office Action.

5. SUMMARY OF CLAIMED SUBJECT MATTER

As recited in independent claim 13, an aspect of the present application relates to a method for transmitting measured information from a measuring computer to a control computer of a measuring system, the measuring computer and the control computer interconnected via a telecommunication network. Specification, page 1, paragraph [0001] and Figure 1. The method includes the step of combining measured data into characteristic values having a lower volume than the measured data. Specification, page 3, paragraph [0017] to page 4, paragraph [0022], page 8, paragraph [0048] and Figure 2. The method

further includes the step of associating the characteristic values with a time of the combining. Specification, page 4, paragraphs [0021] to [0024]. The method further includes the step of transmitting the characteristic values from the measuring computer to the control computer. Specification, page 3, paragraph [0013] and page 4, paragraph [0021].

As recited in independent claim 29, another aspect of the present invention relates to a measuring system. Specification, page 1, paragraph [0001]. The measuring system includes a control computer and a measuring computer interconnected with the control computer via a telecommunications network. Specification, page 1, paragraph [0001], pages 4 and 5, paragraph [0025] and Figure 1. The measuring computer is configured to combine measured data into characteristic values having a lower volume than the measured data. Specification, page 3, paragraph [0017] to page 4, paragraph [0022], page 8, paragraph [0048] and Figure 2. The measuring computer is also configured to associate the characteristic values with a time of the combining. Specification, page 4, paragraphs [0021] to [0024]. The measurement computer is also configured to transmit the characteristic values from the measuring computer to the control computer. Specification, page 3, paragraph [0013] and page 4, paragraph [0021].

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31, which stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Ellesson et al. and Farrell et al., are patentable over the combination of Ellesson et al. and Farrell et al.

B. Whether claims 16, 21, 24, 26 and 32, which stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ellesson et al., are patentable over Ellesson et al.

7. ARGUMENTS

Claims 13 to 15, 17 to 20, 22, 23, 25, 27, and 29 to 31 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Ellesson et al. and Farrell et al. Claims 16, 21, 24, 26, and 32 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over Ellesson et al. It is respectfully submitted that these claims are patentable for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. A *prima facie* obviousness cannot be sustained by "mere conclusory statements." Instead, there must be some "articulated

reasoning with some rational underpinning to support the legal conclusion of obviousness.” See “Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.” at section III. It is respectfully submitted that this burden has not been met in the present case.

A. Ellesson et al. and Farrell et al., whether taken alone or in combination, fail to disclose or suggest all of the features of independent claims 13 and 29.

Independent claim 13 recites a method for transmitting measured information from a measuring computer to a control computer that includes “associating the characteristic values with a time of the combining.” (Emphasis added). Independent claim 29 recites that a measurement computer is configured to “associate the characteristic values with a time of the combining.” (Emphasis added). The term “the combining,” as recited in claims 13 and 29, refers to combining the measured data into characteristic values having a lower volume than the measured data, as recited in claims 13 and 29. Thus, claims 13 and 29 both recite “associate[ing] the characteristic values with a time of the combining” of the measured values into the characteristic values. It is respectfully submitted that neither Ellesson et al. nor Farrell et al., whether taken alone or in combination, disclose or suggest at least these features of claims 13 and 29.

As noted by the Examiner, Ellesson et al. do not teach the aforementioned features of claims 13 and 29. See Office Action mailed February 14, 2007 at page 8, section 21, and Final Office Action mailed June 27, 2007 at page 3, first paragraph. The Final Office Action asserts, however, that “Farrell teaches time-stamping collected traffic record [sic] for purposes of differentiating events ...” and that “time-stamping a data record is a popular way of associating the data with certain related events along the time line.” Final Office Action, page 3, second paragraph. Appellants respectfully disagree with the Examiner.

As regards Farrell et al., like Ellesson et al., Farrell et al. fail to disclose or suggest associating the characteristic values with a time of the combining of the measured values into the characteristic values. Farrell et al. describe a system wide flow aggregation process in which network accounting records (NARs) capture details about activity and applications being used during a call. Component IDs of the NARs are time-stamped. See Farrell et al., col. 9, lines 21 to 22 and lines 49 to 54. The time stamps of the NARs of Farrell merely indicate the time an accounting process component ID is produced for each NAR so that the accounting process can discriminate between multiple NARs generated by a component. See column 9, lines 49 to 54. The time stamps of the component IDs of Farrell et al. thus indicate the time a data record was produced, and have nothing to do with a time of a

combining of the measured values into characteristic values, nor an association of the characteristic values with the time of the combining, as recited in claims 13 and 29. Indeed, Farrell et al. do not teach or suggest such combining at all.

As for the Examiner's assertion that "time-stamping a data record is a popular way of associating the data with certain related events along the time line," Appellants properly traversed this assertion in the Response to Final Office filed August 27, 2007 and requested that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise. In response, in the Advisory Action dated September 5, 2007, the Examiner stated, in part, that

in order to put aside the issue [the examiner's assertion that time-stamping a data record is a popular way of associating the data with certain related events along the time line] and help expedite the prosecution of the application, a reference of Mimura (US 6,847,613) [sic] is provided herewith (see in particular Figs. 7-8 and the related passages)."

The Examiner's attempt to establish that "time-stamping a data record is a popular way of associating the data with certain related events along the time line" does not render obvious the feature of "associate[ing] the characteristic values with a time of the combining" of the measured values into the characteristic values, as recited in claims 13 and 29. Moreover, the reference cited in the Advisory Action, U.S. Patent No. 6,847,613 ("Mimura et al."), does not disclose or suggest the feature of associating the characteristic values with a time of the combining of the measured values into the characteristic values, as recited in claims 13 and 29. Instead, Mimura et al. describe a method of monitoring a network where a packet switch identifies a communication flow across a network and acquires statistics data of the communications flow. *See* Abstract and column 1, lines 6 to 16. The statistics data includes the number of packets that passed through the switch, the number of discarded packets, the time at which the packets arrived at the switch and the time at which the packets were sent out from the switch. *See* Abstract. Indeed, Figures 7 and 8 of Mimura et al., cited in the Advisory Action, show how statistics data obtained by monitoring can be stored in a packet to be sent as part of the communications flow. *See* Figures 7 and 8 and column 11, line 29 to column 12, line 62. Nowhere do Mimura et al. disclose or suggest associating the characteristic values with a time of the combining of the measured values into the characteristic values. For at least the foregoing reasons, it is respectfully submitted that the Examiner's attempt to establish that "time-stamping a data record is a popular way of associating the data with certain related events along the time line" does not render obvious the feature of "associate[ing] the characteristic values with a time of the combining" of the measured values into the characteristic values, as recited in claims 13 and 29.

Thus neither Ellesson et al. nor Farrell et al. discloses or suggest at the least the feature of associating the characteristic values with a time of the combining of the measured values into the characteristic values, as recited in independent claims 13 and 29. Because each of Ellesson et al. and Farrell et al. do not teach or suggest this feature of independent claims 13 and 29, neither of these references alone, nor a combination thereof, to the extent proper, could render either of claims 13 or 29 or any of their respective dependent claims, unpatentable.

B. No reason has been shown for a person of ordinary skill to combine Ellesson et al. and Farrell et al.

It is respectfully submitted that no "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" has been provided, as required by the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," section III. Even if a combination of Ellesson et al. and Farrell et al. did somehow provide the features of independent claims 13 and 29, the Final Office Action provides no indication of a reason one of skill in the art would have made, or attempted to make, such a combination. Merely because certain reference can be combined or modified does not render the resultant combination obvious unless a basis for the desirability of the combination is shown. At least a convincing line of reasoning must be presented to support the rejection. It is respectfully submitted that the Final Office Action has not provided any convincing line of reasoning for making the proposed modification. The mere unsupported and conclusory assertion provided in the Final Office Action that "[i]t would have been obvious ... to associate time information in Ellesson's collected statistics because it makes Ellesson's traffic prediction/regulation more accurate" hardly amounts to a convincing line of reasoning. Final Office Action, page 3, second paragraph. As such, the present rejection is apparently based on nothing more than improper hindsight, which cannot support an obviousness rejection. Since there is no reason provided for making the proposed combination, it is respectfully submitted that the combination of Ellesson and Farrell do not render unpatentable claims 13 or 29, or any of their respective dependent claims, unpatentable for at least this additional reason.

For at least the foregoing reasons, it is respectfully submitted that the final rejections of claims 13 to 15, 17 to 20, 22, 23, 25, 27 and 29 to 31 under 35 U.S.C. §103(a), based on the combination of Ellesson et al. and Farrell et al., and of claims 16, 21, 24, 26 and 32 under 35 U.S.C. §103(a), based on Ellesson et al., should be reversed.

CONCLUSION

In view of the foregoing it is believed that claims 13 to 27 and 29 to 32 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

8. CLAIMS APPENDIX

An appendix containing a copy of the claims involved in the present appeal is attached hereto.

9. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal. An "Evidence Appendix" is nevertheless attached hereto.

10. RELATED PROCEEDINGS APPENDIX

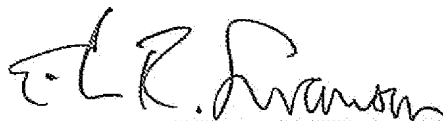
As indicated above in Section II, "[t]here are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellants, 'which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.'" As such, there are no "decisions rendered by a court or the Board in any proceeding identified

pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]" to be submitted. A "Related Proceedings Appendix" is nevertheless attached hereto.

Respectfully submitted,

Dated: December 20, 2007

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Claims Appendix

13. A method for transmitting measured information from a measuring computer to a control computer of a measuring system, the measuring computer and the control computer being interconnected via a telecommunications network, the method comprising:

combining measured data into characteristic values having a lower volume than the measured data;

associating the characteristic values with a time of the combining; and

transmitting the characteristic values from the measuring computer to the control computer.

14. The method as recited in claim 13 wherein the telecommunications network includes at least one of an internet and an intranet.

15. The method as recited in claim 13 wherein the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters.

16. The method as recited in claim 13 wherein the characteristic values include at least one of a minimum, a mean value, a maximum, and a standard deviation of the measured data over a time interval.

17. The method as recited in claim 13 wherein the characteristic values include a statistical value of the measured data over a time interval.

18. The method as recited in claim 13 further comprising determining a time interval for combining the measured data as a function of a measuring method.

19. The method as recited in claim 13 wherein the measuring system includes a second measuring computer and wherein measurement packets are transmitted between measuring computer and the second measuring computer.

20. The method as recited in claim 19 wherein the measurement packets include User Datagram Protocol measurement packets.

21. The method as recited in claim 19 wherein the characteristic values include a sum of all packets lost and a maximum of all successively occurring packet losses, and

further comprising determining the sum of all packets lost and the maximum of all successively occurring packet losses during a detection of measurement packet losses in a time interval.

22. The method as recited in claim 19 wherein the measured data includes unidirectional transmission characteristics.

23. The method as recited in claim 19 wherein the combining and transmitting are performed using the measuring computer, and wherein the measuring computer functions as a receiver and the second measuring computer functions as a sender.

24. The method as recited in claim 22 wherein the characteristic values include a mean one-way delay, a maximum one-way delay, and minimum one-way delay, a standard deviation of

a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet throughput.

25. The method as recited in claim 22 wherein the characteristic values include a statistical characteristic value.

26. The method as recited in claim 23 wherein the characteristic values include a mean one-way delay, a maximum one-way delay, and minimum one-way delay, a standard deviation of a one-way delay, a mean IP delay variation, a maximum IP delay variation, a standard deviation of an IP delay variation, a packet loss, and a packet throughput.

27. The method as recited in claim 23 wherein the characteristic values include a statistical characteristic value.

29. A measuring system comprising:

a control computer; and

a measuring computer interconnected with the control computer via a telecommunications network, the measuring computer being configured to:

combine measured data into characteristic values having a lower volume than the measured data;

associate the characteristic values with a time of the combining; and

transmit the characteristic values to the control computer.

30. The measuring system as recited in claim 29 wherein the telecommunications network includes at least one of an internet and an intranet.

31. The measuring system as recited in claim 29 wherein the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters.

32. The measuring system as recited in claim 29 wherein the characteristic values include at least one of a minimum, a mean value, a maximum, and a standard deviation of the measured data over a time interval.

Evidence Appendix

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132. No other evidence has been entered by the Examiner or relied upon by Appellants in the appeal.

Related Proceedings Appendix

As indicated above in Section II, "[t]here are no other prior or pending appeals, interferences or judicial proceedings known by the undersigned, or believed by the undersigned to be known to Appellant, 'which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.'" As such, there are no "decisions rendered by a court or the Board in any proceeding identified pursuant to [37 C.F.R. § 41.37(c)(1)(ii)]" to be submitted.